

1 Andrew J. Sommer, State Bar No. 192844  
2 CONN MACIEL CAREY LLP  
3 870 Market Street, Suite 1111  
4 San Francisco, California 94102  
5 Telephone: (415) 268-8881  
6 Facsimile: (415) 268-8881  
7 asommer@connmaciel.com

8 Kara M. Maciel, Admitted *Pro Hac Vice*  
9 CONN MACIEL CAREY PLLC  
10 5335 Wisconsin Avenue, NW  
11 Suite 660  
12 Washington, DC 20015  
13 Telephone: (202) 909-2730  
14 Facsimile: (202) 827-7904  
15 kmaciel@connmaciel.com

16 Attorneys for Defendant,  
17 SHAMROCK FOODS COMPANY

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 PAUL REIF, an individual,  
21 Plaintiff,

22 v.

23 SHAMROCK FOODS COMPANY, INC.,  
24 an Arizona Corporation; and DOES 1 to  
25 100, inclusive,

26 Defendants.

CASE NO. 5:15-cv-636 VAP-SP

**APPLICATION FOR LEAVE TO FILE  
DOCUMENTS UNDER SEAL IN  
SUPPORT OF DEFENDANT SHAMROCK  
FOODS COMPANY'S MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL SUMMARY  
JUDGMENT**

Date: February 29, 2016  
Time: 2:00 P.M.  
Court Room: 2  
Judge: Hon. Virginia A. Phillips

Removal Filed: April 2, 2015  
Trial Date: April 19, 2016

27 TO: PLAINTIFF, PAUL REIF, AND HIS ATTORNEYS OF RECORD:

28 NOTICE IS HEREBY GIVEN that pursuant to Local Rules 79-5.2.2, the Central District  
of California Pilot Program for filing under seal, and the Protective Order previously entered in

1 this case, Defendant Shamrock Foods Company (“Defendant” or “Shamrock”) respectfully moves  
 2 this Court to permit the filing under seal of certain documents in support of its Motion for  
 3 Summary Judgment, or in the alternative, Partial Summary Judgment.

4 On September 25, 2015, the Court granted the Parties’ Stipulated Protective Order as to  
 5 Confidential Information (“Protective Order”), which was entered into to protect confidential and  
 6 proprietary information to be exchanged during discovery and trial in this case. ECF Doc. No.  
 7 24. The Parties negotiated the information contained in the Protective Order and each consented  
 8 to its entry. ECF Doc. No. 23.

9 The Protective Order permits any party producing documents to identify those documents  
 10 as Confidential if the producing party believes the documents are entitled to confidential  
 11 treatment under applicable legal principle. ECF Doc No. 24, ¶ 1(a). The Protective Order also  
 12 provides that depositions and documents may be designated as Confidential, and that any  
 13 Confidential Information, documents or materials that are marked as exhibits, shall be treated as  
 14 Confidential Information. ECF Doc. No. 24, ¶ 5.2(b) and (d).

15 The Stipulated Protective Order provides that any document designated Confidential  
 16 should be filed under seal with the Court with an Application For Leave to File Under Seal  
 17 pursuant to Civil Local Rule 79-5.2.2 and the Central District of California Pilot Program  
 18 Procedures for filing under seal. ECF Doc No. 24, ¶ 1.

19 During the course of the litigation, Defendant has produced documents it has identified as  
 20 Confidential, which includes a great deal of Shamrock’s technical, confidential, and proprietary  
 21 information. In keeping with the terms of the Protective Order and balancing the public’s historic  
 22 right of access, Defendant files this Application For Leave to File Under Seal the following  
 23 exhibits and deposition excerpts in support of its Motion for Summary Judgment/Partial  
 24 Summary Judgment, which have been designated as “Confidential” subject to the Protective  
 25 Order in this case.

- 26 • Exhibit A (2/11/13 email with third party vendor regarding margarine),
- 27 Declaration of David Cloud;
- 28 • Exhibit A (sales budget) and Exhibit B (sales report identifying customers),

1 Declaration of Chris Jenkins;

- 2 • Exhibit 21 (sales budget) and Exhibit 24 (2/11/13 email with third party vendor  
3 regarding margarine), Deposition of Paul Reif (Ex. B to Declaration of Andrew J.  
4 Sommer in Support of Summary Judgement Motion (“Sommer Dec.”);  
5 • Deposition of Alan Heitkamp (Ex. C to Sommer Dec), 35:16-36:16 (specific  
6 internal procedures for monitoring shipments of products).

7 Declaration of Andrew J. Sommer in Support of Defendant Shamrock Foods Company’s  
8 Application to File Certain Documents Under Seal (“Sommer Dec”), ¶¶ 3-6.

9 The exhibits and deposition excerpts are confidential and, if disclosed, would provide  
10 Shamrock’s competitors insight into its confidential customers and business practices as well as  
11 trade secrets. The court may issue orders limiting disclosure of trade secrets “or other  
12 confidential research, development, or confidential information” Fed.R.Civ.P. 26(c); see  
13 *Nutraceutical, Inc. v. Syntech (SSPF) Int’l, Inc.*, 242 FRD 552, 555, fn. 4 (CD CA  
14 2007)(customer/supplier lists and sales and revenue information qualify as “confidential  
15 commercial information”); *Apple, Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9<sup>th</sup> Cir.  
16 2011)(safeguarding trade secrets overcomes presumption against seeking order).

17 Defendant believes that any alternatives to sealing would not provide it with sufficient  
18 protection, since these documents would otherwise be filed through the electronic case filing  
19 system and therefore confidential information regarding its practices and procedures would be  
20 available to the public at large. Sommer Dec., ¶¶ 7,8.

21 Wherefore, the above reasons considered, Defendant respectfully requests that the Court  
22 grant its Application for leave to file the above referenced exhibits under seal, and further permits  
23 the Clerk of the Court to return to counsel or destroy any sealed material at the end of the  
24 litigation.

25 DATED: January 28, 2016

CONN MACIEL CAREY LLP

26 By: /s/ Andrew J. Sommer

27 Andrew J. Sommer  
28 Attorneys for Defendant  
SHAMROCK FOODS COMPANY